

REMARKS

35 U.S.C. § 102

Claims 33 – 41 are directed to an analyzer. The analyzer includes an analyzing portion device that differentiates blood cells *and* fluorescent carrier particles. The differentiation is based on detected fluorescence intensities transmitted by the first detector and the detected scattered light intensities transmitted by the second detector. The *analyzing portion device* detects an agglutination degree of the differentiated fluorescent carrier particles based on the detected scattered light intensities transmitted by the second detector.

Rodriguez et al. (U.S. Patent No. 6,288,652) is directed to a method and apparatus of analyzing cells in a whole blood sample. Rodriguez's method and apparatus is neither identical (nor substantially identical) to the claimed system because it does not disclose *a structure that differentiates* blood cells and fluorescent carrier particles based on the structural output of first and second sensors that capture fluorescence intensities and the detected scattered light intensities, respectively. Rodriguez further fails to detect agglutination degrees of the differentiated fluorescent carrier particles based on the detected scattered light intensities measured by the structure of the second detector (nor does it disclose a reagent that comprises fluorescent carrier particles sensitized with an antibody or an antigen against a target substance found in the serum or blood plasma portion of a whole blood specimen as acknowledged by the Official Action). Since Rodriguez does not disclose these limitations and because the limitations at issue impart *distinct structural characteristics to the claimed analyzer* (e.g., a detector that detects particular features, an analyzing device that differentiates physical and tangible objects, such as the structure of the blood, etc.) there is no sound basis for holding that the system and prior art are the same. See MPEP 2112.01; *In re Garnero* 412 F.2d 276, 279 (CCPA 1979). Therefore, Applicant does not have the burden of establishing the capabilities of the prior art. See MPEP 2112.01. Since one prior art reference (Rodriguez) does not disclose the features, *structure, or structural characteristics* of the claim elements nor is there a showing of inherency (since it lacks disclosure), Rodriguez

does not anticipate the pending claims. For this reason, Applicant respectfully requests withdrawal of this rejection.

The Official Action makes reference to Nakashima et al. (U.S. Patent No. 7,390,677) as a further example (although the Official Action only recites one 35 U.S.C. § 102 rejection). Nakashima is directed to an immunoassay and an immunoassay apparatus. Nakashima also does not disclose "fluorescent carrier particles," their detection, or an analyzing portion device that differentiates "the blood cells and the fluorescent carrier particles based on the detected fluorescence intensities by the first detector and the detected scattered light intensities by the second detector". Nakashima uses insoluble carrier particles having different diameter of blood cells to differentiate the insoluble carrier particles from the blood cells. Nakashima, column 4, lines 51-60. For this reason, Applicant respectfully requests withdrawal of this rejection.

CONCLUSION

Applicants respectfully submit that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited. If for any reason the Examiner feels that this Response and Request for Reconsideration does not put the claims in condition for allowance, and that a discussion would be helpful to advance prosecution, it is respectfully requested that the Examiner contact the undersigned attorney directly at (312) 321-4786.

Respectfully submitted,

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200

/James A. Collins/
James A. Collins
Registration No. 43,557
Attorney for Applicants